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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,430	10/08/2003	Tetsuya Kubo	33023US1	7140
116	7590	12/21/2005	EXAMINER	
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			LE, DANH C	
			ART UNIT	PAPER NUMBER
			2683	

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/681,430	KUBO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	DANH C. LE	2683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 November 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 10-14 and 16-19 is/are allowed.
- 6) Claim(s) 1-3,5,6,8,15,20,21 is/are rejected.
- 7) Claim(s) 4,7,9 and 22 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**1. Claims 1-3, 5, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weadon (US 6,226,501) in view of Johnson (US 6,463,262).**

As to claim 1, Weadon teaches the portable telephone apparatus (figure 4B and col.4, lines 10-col.5, line 36) comprising:

means for radio communication, said means for radio communication including a transmitter and a receiver;

a body, said body including a plurality of first key entry means; and  
a cover pivotally connected to said body, said cover having one or more second key entry means, each of said one or more second key entry means capable of activating a corresponding one of said first key entry means when said cover is in a closed position.

Weadon fails to teach a cover slidably connected to said body. Johnson teaches a cover slidably connected to said body (figure 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teaching of Johnson into the system of Weadon in order to provide the optimum

space in between the earphone and the microphone for convenient use by bring the microphone closer to the user's mouth as Johnson suggested on col.3, lines 42-59.

As to claim 2, Weadon teaches the portable telephone apparatus of claim 12, further comprising cover opening/closing state detecting means, wherein at least one operation is performed when said cover opening/closing state detecting means detects that said cover is opened or closed. Weadon fails to teach the cover is slid opened or slid closed. Johnson teaches detecting the cover is slid opened or slid closed (col.6, lines 6-19). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teaching of Johnson into the system of Weadon in order to provide system enhancement performance of the radiotelephone having a primary keypad and a movable flip cover that contains a secondary keypad.

As to claim 3, Weadon teaches the portable telephone apparatus of claim 12, said body further including a first microphone and said cover further including a slot which functions as a second microphone (for the skill in the art the slot may replace by a second mouthpiece).

As to claim 5, Weadon teaches the portable telephone apparatus (figure 4B and col.4, lines 10-col.5, line 36) comprising:

means for radio communication, said means for radio communication including a transmitter and a receiver;

a body, said body including a plurality of first key entry means;

a cover moveably connected to said body, said cover having a plurality of second key entry means, each of said second key entry means capable of activating a

corresponding one of said first key entry means when said cover is in a closed position; and

cover opening/closing state detecting means; wherein at least one operation is performed when said cover opening/closing state detecting means detects that said cover is opened or closed, and further wherein said at least one operation is programmable by a user.

Weadon fails to teach a cover slidably connected to said body. Johnson teaches a cover slidably connected to said body (figure 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teaching of Johnson into the system of Weadon in order to provide the optimum space in between the earphone and the microphone for convenient use by bring the microphone closer to the user's mouth as Johnson suggested on col.3, lines 42-59.

As to claim 8, the combination of Weaden and Johnson teaches the portable telephone apparatus of claim 5, wherein in said cover is slidably connected to said body (Johnson, figure 3).

**2. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weadon and Johnson in view of Norman (US 6,073,027).**

As to claim 6, Weadon and Johnson teaches a portable telephone apparatus according to claim 5. Weadon and Johnson fails to teach the cover opening/closing state detecting means including a magnetic and a means for detecting said magnet. Norman teaches the control means perform call release operation when said cover opening/closing state detecting means has detected closing of the sliding cover from the

open state (col.7, line 62-col.8, line 5) and said magnet comes in close proximity to said lead switch to turn on/off said lead switch when the cover is closed (col.5, line 56, col.6, line 5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teaching of Norman into the system of Weadon in order to provide enhanced system performance of the telephone having a primary and secondary keypad.

**3. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over**

**Weadon and Johnson in view of Roeder (US 5,491,745).**

As to claim 15, Weadon teaches the portable telephone apparatus comprising: means for radio communication, said means for radio communication including a transmitter and a receiver; a body, said body including a plurality of first key entry means; and a cover connected to said body, said cover having a plurality of second key entry means capable of activating a corresponding one of said first key entry means when said cover is in a closed position, wherein some portion of said first key entry means can be registered with a corresponding phone number, each of said first entry means being pre-registered with a corresponding key input operation signal,

cover opening/closing state detecting means, wherein at least one operation is performed when said cover opening/closing state detecting means detects that said cover is opened or closed.

Weadon fails to teach a cover slidably connected by the body and detects the cover is slid opened. Johnson teaches a cover slidably connected by the body and

detects the cover is slid opened (col.6, lines 6-19). The combination of Weadon and Johnson fails to further teach when one of said some portion of said first key entry means is activated shorter than a predetermined period, said key input operation signal is inputted, and when one of said some portion of said first key entry means is activated longer than the predetermined period, said corresponding number is connected. Roeder teaches if one of said some portion of said first key entry means is activated for more than a first time period, the corresponding phone number is displayed on said display, and still further wherein, if said one of said some portion of said first key entry means is activated for more than a second time period, said corresponding phone number is connected (col.6, line 24-col.8, line 25). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teaching of Roeder into the system of Weadon and Johnson in order to provide system enhancement performance of the radiotelephone having a primary keypad and a movable flip cover that contains a secondary keypad.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**4. Claims 20, 21 are rejected under 35 U.S.C. 102(e) as being anticipated by xx.**

As to claim 20, xx teaches a portable apparatus (figure 4A-C) comprising:  
means for radio communication, said means for radio communication including a transmitter and a receiver;  
a body, said body including a plurality of first key entry means; and  
a cover connected to said body, said cover having a second key entry means including a top portion of a particular width and a flat bottom portion connected to said top portion, said flat bottom portion of a width larger than said particular width, wherein, when said cover is in a closed position,  
a portion of said flat bottom portion is extended toward corresponding one of said first key entry means by depressing said top portion of said second key entry means with a force, causing said portion of said flat bottom portion to contact said corresponding one of said first key entry means to activate said corresponding one of said first key entry means.

As to claim 21, xx teaches an apparatus of claim 20, wherein said particular width is less than the width of a top portion of said corresponding one of said first key entry means (figure 4A-C).

#### ***Response to Arguments***

Applicant's arguments filed 11/04/05 have been fully considered but they are not persuasive.

As to pages 9, 10 of the Applicant's remarks, the applicant's argues that the examiner does not provide sufficient motivation for combination of the prior arts.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the combination of Johnson with Weadon provide the optimum space in between the earphone and the microphone for convenient use by bring the microphone closer to the user's mouth as Johnson suggested on col.3, lines 42-59.

As to page 10, paragraph 5 of the Applicant's remarks, the applicant's argues that the Johnson cover cannot merely be substituted for the Weadon cover, because the Weadon cover includes secondary keys whereas the Johnson cover does not.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In this case, Weadon already teaches the secondary keys so it is not necessary that Johnson also teaches the secondary keys.

As to page 11, paragraphs 1 and 2 of the Applicant's remarks, the applicant's argues that the combination of the prior arts is hindsight reasoning and clearly improper.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As to page 11, paragraph 3 of the Applicant's remarks, the applicant's stated that the examiner cites Weadon teaching this limitation.

In response, the examiner believes that Johnson teaches detecting the cover is slid opened or slid closed (col.6, lines 6-19).

As to page 11, paragraph 4 of the Applicant's remarks, the applicant's argues that Weadon fails to teach second microphone.

In response, the examiner believes that the purpose of the second microphone is used when the mobile is in the close position, Weadon teaches slot which performed the functional when the flip cover 16 is closed, sound from a user may pass through a slot between the flip cover and the top handset housing 12, as is known functional as the microphone to those skilled in the art on col.3, lines 26-49.

***Allowable Subject Matter***

Claims 4, 7, 9, 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 10-14, 16-19 are allowed.

As to claims 4, 7, 9, the teaching of above prior arts either alone or in combine fails to teach the portable telephone apparatus of claim 5, further comprising a display, wherein some portion of said first key entry means can be registered with a corresponding phone number, and further wherein, if one of said some portion of said first key entry means is activated for more than a first time period, the corresponding phone number is displayed on said display, and still further wherein, said one of said some portion of said first key entry means is activated for more than a second time period, said corresponding phone number is connected or he portable telephone apparatus of claim 5, wherein said at least one operation is programmable by a user.

As to claims 10, 16, the teaching of above prior arts either alone or in combine fails to teach a cover slidably connected to said body, said cover having a plurality of second key entry means capable of activating a corresponding one of said first key entry means when said cover is in a closed position, wherein some portion of said first key entry means can be registered with a corresponding phone number, each of said first entry means being pre-registered with a corresponding key input wherein, when one of said operation signal, and further some portion of said first key entry means is activated shorter than a predetermined period, said key input operation signal inputted,

and when one of said some portion of said first key entry means is activated longer than the predetermined period, said corresponding number is connected.

Dependent claims 11-14, 17-19 are allowable for the same reason.

As to claim 22, the teaching of above prior arts either alone or in combine fails to teach the bottom portion is also connected to another second key entry means, wherein another portion of said flat bottom portion is extended toward another one of said first key entry means corresponding to said another second key entry means by depressing said top portion of said another second key entry means with a force, causing a portion of said flat bottom portion to contact said another first key entry means to activate said another first key entry means.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANH C. LE whose telephone number is 571-272-7868. The examiner can normally be reached on 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, WILLIAM TROST can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
danh

December 16, 2005.

DANH CONG LE  
PATENT EXAMINER